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Supreme Court of the United States

October Term, 1960

No. 314

PORTSMOUTH BASEBALL CORPORATION,

Petitioner,

against

FORD C. FRICK, Commissioner of Baseball;
BALTIMORE BASEBALL CLUB, INC.,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Of Counsel:
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Despite the contention of the respondents, the patent fact is that there are special and important reasons for the relief sought herein.

The lower courts, in violation of the common and accepted rules of interpretation, have rewritten an agreement between the parties referring only to "protection". There was no limitation as to physical invasion or otherwise. The lower courts have, however, rewritten the contract so as to read "Protection From Physical Invasion Of Territory". It is not the petitioner, therefore, who has asked for a revision of the contract but the lower courts have themselves revised the contract wholly in violation of the usual standards of construction.

The decisions of the lower courts create an error of fundamental public and national importance. The lower courts inadvertently have in effect encouraged the violation of existing contracts in all fields of endeavor and to an extent that can only result in uncertainty and limitless litiga-

tion. In substance, the lower courts have held that protective restrictions as to territory are physical only, and may be violated by the use of television.

What is the effect of this decision on an exclusive sales agency agreement? Can a manufacturer solicit orders by television in a territory which he has assigned to an exclusive sales agency?

Where a former employee had, in his Employment Contract, agreed not to compete with his employer within a certain territory and over a certain period of years, can he nevertheless upon his discharge solicit his Employer's customers by television within the restricted area?

Where businesses have been sold prior to the advent of television, can restrictive covenants against competition within a given area, over a given period of time, now be violated by the use of television to solicit business within the area?

It is obvious why the respondents failed to answer the illustration contained in petitioner's main brief, wherein it was stated that it would be ridiculous to maintain that a treaty between two nations not to invade the other's territory, but executed in the era of commandos and invasion barges, has become *nudum pactum* in the era of intercontinental ballistic missiles.

The petitioner is only asking for what it contracted for namely "protection"—"protection" and "protection" alone is what was contracted for—not "protection" subject to unwritten limitations.

Respondents' fear expressed at Page "8" of their brief, that a reversal in this matter might subject the Major Leagues to law suits is naive, to say the least. They argue that the Major Leagues should not be held liable because to do so would subject them to damages. That is indeed a novel theory in jurisprudence. On the contrary, the agree-

ments between the leagues provided the very method or machinery to be employed in the event the Major Leagues desired to invade Minor League territory, yet the Major Leagues of their own volition ignored the procedure which they themselves had provided for.

They, themselves provided for a private means of compensation and reimbursement which obligation they have avoided—that breach must be compensable by damages in a court of law.

Wherefore, it is respectfully submitted that this petition for Writ of Certiorari to review the judgment of the Court of Appeals for the Second Circuit should be granted.

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